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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/765,450  | 01/27/2004  | William A. Wiles     | WILES-004           | 8592             |
| 7590 02/22/2008<br>DONALD J. LENKSZUS<br>PO BOX 3064<br>CAREFREE, AZ 85377-3064 |             |                      |                     |                  |
| EXAMINER<br>SUTTON, ANDREW W  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3765  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 02/22/2008  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/765,450

**Applicant(s)**

WILES, WILLIAM A.

**Examiner**

ANDREW W. SUTTON

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Dougherty (US 5,428,844). Dougherty teaches a sweatband 10 as claimed comprising a hydrophilic foam core (see column 2, lines 4-6) and a fabric at 12,14 for contacting the head of the wearer. Dougherty further teaches the fabric having moisture wicking properties (Col. 2 line 4).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dougherty (US 5,428,844) in view of Hermann (US 6,025,287). Dougherty discloses the invention substantially as claimed above. However, Dougherty does not teach the foam core resistant to bacteria or organisms. Hermann teaches the

use of bactericide (see column 2, line 37) in articles of apparel for providing a bactericide to kill germs generated by body fluids. It would have been obvious to one of ordinary skill in the art at the time of the invention to achieve the advantage of killing germs/organisms.

As to claims 4, Dougherty does not teach the foam comprising absorbent polymer crystals. Hermann teaches the use of super absorbent polymers equivalent to absorbent polymer crystals (see column 5, lines 39-64). It would have been obvious to ordinary skill in the art at the time of the invention to provide the foam core 30 of Dougherty with the super absorbent polymers of Herman to achieve the advantage of increasing the capacity of the foam core to absorb sweat.

Claims 5-8, 10, 12-15, 17, 21, 23-26 30-33, 35 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kallis (US 3,906,548) in view of Dougherty (US 5,428,844). Kallis teaches a helmet comprising a suspension 10 for being carried by the helmet body and an absorbent cushion, the cushion comprising a cushion portion 40 and an attachment portion 42. Kallis does not teach the cushion portion comprising a hydrophilic foam core and a fabric covering said foam core. Dougherty teaches forming a cushion to comprise a cushion portion comprising a hydrophilic foam core 30 (see column 2, line 5) and a fabric at 12, 14 covering foam core 30. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the cushion portion of Dougherty for that at 40 of Kallis to achieve a like function of absorbing

sweat. Kallis teaches the use of a plurality of strips 24 carrying hook portions 31 (see column 2, lines 1-22).

Claims 9, 11, 16, 18, 20, 22, 27, 29, 36, 34, 38, and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Kallis (US 3,906,548) in view of Dougherty (US 5,428,844) in further view of Hermann (US 6,025,287).

Kallis/Dougherty does not teach the absorbent crystals. Hermann teaches the use of super absorbent polymers equivalent to absorbent polymer crystals (see column 5, lines 39-64). It would have been obvious to ordinary skill in the art at the time of the invention to provide the foam core 30 of Dougherty with the super absorbent polymers of Herman to achieve the advantage of increasing the capacity of the foam core to absorb sweat.

As to claim 11, 18, 20, 29, 36, 38 Dougherty/Kallis does not teach the foam core resistant to bacteria or organisms. Hermann teaches the use of bactericide (see column 2, line 37). It would have been obvious to one of ordinary skill in the art at the time of the invention to achieve the advantage of killing germs/organisms.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW W. SUTTON whose telephone

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number is (571)272-6093. The examiner can normally be reached on Monday - Friday 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary L. Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AWS  
2/18/08

/Gary L. Welch/  
Supervisory Patent Examiner, Art Unit 3765